

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
	:	
SAMUEL JOHNSON,	:	
	:	
Appellant,	:	
	:	
v.	:	OAL Docket No. CSV 03796-92
	:	
STATE OF NEW JERSEY, DEPARTMENT	:	
OF HUMAN SERVICES,	:	
	:	
Respondent.	:	
	:	
_____	:	
	:	
STATE OF NEW JERSEY (HUNTERDON	:	
DEVELOPMENTAL CENTER),	:	
	:	
Respondent,	:	
	:	
-and-	:	PERC Docket No. CO-H-93-88
	:	OAL Docket No. PRC 2960-93
IFPTE, LOCAL 195,	:	
	:	
Charging Party.	:	
	:	

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the State of New Jersey (Hunterdon Developmental Center). The Complaint was based on an unfair practice charge filed by IFPTE, Local 195 alleging that the employer violated the Act when it fabricated charges against shop steward Samuel Johnson and suspended him so that he would refrain from filing grievances. Johnson was later terminated based on the incident leading to his suspension. Johnson also contested his discharge before the Merit System Board and the cases were consolidated for hearing before an Administrative Law Judge. The Commission adopts the ALJ's findings of fact and concludes that the charging party did not prove that anti-union animus was a substantial or motivating factor in the decision to suspend or terminate Johnson. The case is transferred to the Merit System Board for its consideration of any remaining issues.

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	:	
Charging Party.	:	
	:	

Appearances:

For the State of New Jersey, Robert J. DelTufo,
Attorney General (Stephan M. Schwartz, Deputy Attorney
General; Sean Dias, Deputy Attorney General)

For the Appellant-Charging Party, Balk, Oxfeld, Mandell
& Cohen, attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On September 3, 1992, IFPTE, Local 195 filed an unfair
practice charge against the State of New Jersey (Hunterdon
Developmental Center). The charge alleges that the employer

violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (5),^{1/} when it fabricated charges against shop steward Samuel Johnson and suspended him so that he would refrain from filing grievances. Johnson was later terminated based on the incident leading to his suspension. A Complaint and Notice of Hearing issued on November 9, 1992.

Johnson also contested his discharge before the Merit System Board. His appeal was transferred to the Office of Administrative Law as a contested case. We and the Board agreed that the matters should be consolidated for hearing and that, after the issuance of an initial decision by an administrative law judge, we would first decide whether Johnson engaged in activity protected by the Act and whether that activity, if protected, was a substantial or motivating factor in his termination; the Merit System Board would then determine whether Johnson's removal was for legitimate business

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. Since the charge alleges anti-union discrimination, we assume that the charging party inadvertently omitted an alleged violation of subsection 5.4(a)(3). That subsection prohibits public employers, their representatives or agents from: (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

reasons and was otherwise warranted under merit system law; and if it were found that the removal was illegally motivated and not for legitimate business reasons, the matter would then be returned to us for consideration of specialized remedial relief under our Act.

On January 15, 1993, Administrative Law Judge Joseph Lavery conducted a plenary hearing. On April 2, 1993, he issued an initial decision finding that Johnson was insubordinate as outlined in the charges and specifications before the Merit System Board. He concluded that Johnson's termination should be affirmed and the unfair practice charge should be dismissed.

On April 28, 1993, Johnson and Local 195 filed exceptions. The exceptions urge that Johnson is not guilty of bumping his stomach into his supervisor, striking his supervisor's ears, or stating that he would kill his supervisor. They instead contend that Johnson was threatened by his supervisor during a discussion about overtime and that the supervisor retaliated against Johnson for his asserting contractual rights of unit members and challenging the supervisor's ability to earn overtime compensation.

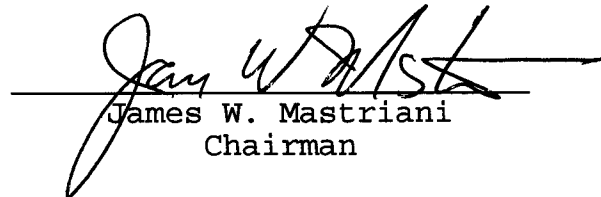
We have reviewed the Administrative Law Judge's initial decision, the exhibits and the exceptions. The Judge concluded that the case, in large part, came down to the supervisor's word against Johnson's. Having heard the conflicting testimony, he concluded that Johnson's testimony did not ring true and that the supervisor's testimony, supplemented by the testimony of the engineer in charge of the entire facility, was more credible.

Johnson's version of what happened is not inconceivable, but the Administrative Law Judge was not convinced that his version occurred. We have no basis to reject the Judge's credibility determinations. Accordingly, we adopt his findings of fact and conclude that the charging party did not prove that anti-union animus was a substantial or motivating factor in the decision to suspend or terminate Johnson. We transfer the case to the Merit System Board to determine whether Johnson's removal was otherwise warranted under merit system law.

ORDER

The Complaint is dismissed. The matter is transferred to the Merit System Board for its consideration of any remaining issues.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Regan voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision. Commissioner Wenzler abstained from consideration.

DATED: May 20, 1993
Trenton, New Jersey
ISSUED: May 21, 1993